

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 21

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

Ex parte JEROME NICHOLSON

---

Appeal No. 2001-0154  
Application 08/838,266

---

ON BRIEF

---

Before ABRAMS, STAAB and CRAWFORD, Administrative Patent  
Judges.

CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final  
rejection of claims 1 through 17 which are all the claims  
pending in the application.

Appeal No. 2001-0154  
Application No. 08/838,266

The appellant's invention is a bracket system capable of selectively supporting a curtain rod and a mini-blind. An understanding of the appealed subject matter can be derived from a reading of exemplary claims 1, which appears in the appendix to the appellant's brief.

The prior art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Bellinger	4,226,395	Oct. 07,
1980		
Corcoran	5,505,418	Apr. 09, 1996

The rejections

Claims 1 through 6, and 9 through 15 stand rejected under 35 U.S.C. 102(b) as being clearly anticipated by Corcoran.

Claims 7 and 8 stand rejected under 35 U.S.C. 103 as being unpatentable over Corcoran in view of Bellinger.

Claims 16 and 17 stand rejected under 35 U.S.C. 103 as being unpatentable over Corcoran.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted

Appeal No. 2001-0154  
Application No. 08/838,266

rejections, we make reference to the examiner's answer (Paper No. 18) for the complete reasoning in support of the rejections, and to the appellant's brief (Paper No. 15) for the appellant's arguments thereagainst.

#### OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 1 through 6, and 9 through 15 under 35 USC 102(b) as being anticipated by Corcoran. To support a rejection of a claim under 35 U.S.C. § 102(b), it must be shown that each element of the claim is found, either expressly described or under principles of inherency, in a single prior art reference. See Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 772, 218 USPQ 781, 789 (Fed. Cir. 1983), cert. denied, 465 U.S. 1026 (1984).

It is the position of the examiner that:

Corcoran discloses a bracket system comprising a bracket 2 with opposed channels having received therein a curtain rod adapter including a plate 40 and a T-shaped rod receiving member 54 adapted to receive a valance 60 which responds to a curtain rod for the valance 60 supports a cloth covering. [examiner's answer at page 4].

Appellant argues that Corcoran does not disclose a bracket having a curtain rod adaptor shaped to receive an end of a curtain rod. The examiner responds:

Corcoran discloses the rod receiving member 54 as supporting a valance which has curved ends 62,64 which are slid over the arms 56, 58 of the clip 54. The valance is cloth covered for aesthetic purposes. Inasmuch as the valance is disclosed as supporting a cloth it fully functions as a curtain rod for curtain rods support cloth coverings for various purposes including that for aesthetics. [examiner's answer at page 5].

While it is true that the claims in a patent application are to be given their broadest reasonable interpretation consistent with the specification during the prosecution of a patent application (see In re Zletz, 893 F.2d 319, 321, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989)) and limitations from a pending application's specification will not be read into the claims (see Sjolund v. Musland, 847 F.2d 1573, 1582, 6 USPQ2d 2020, 2027

(Fed. Cir. 1988), it is also well settled that terms in a claim should be construed as those skilled in the art would construe them (see Specialty Composites v. Cabot Corp., 558 F.2d 1008, 1016, 6 USPQ2d 1601 (CCPA 1977)).

In the instant case, the examiner has expanded the meaning of a curtain beyond the interpretation which would have been given to the term by a person of ordinary skill in the art. In this regard, in our view, a curtain extends at least the full length of a window. The valance disclosed in Corcoran does not extend the full length of the window. The valance of Corcoran covers only the top of the window. As such, the bracket disclosed in Corcoran does not have a curtain rod adapter shaped to receive the end of a curtain rod because Corcoran discloses a valance rod not a curtain rod. Therefore, we will not sustain the examiner's rejection of claim 1 and claims 2 through 6 dependent thereon. We will likewise not sustain the rejection as it is directed to claim 9 and claim 10 dependent thereon, and claim 11 and claim 12 through 15 dependent thereon, because claims 9 and 11 both recites "a curtain rod . . . adapted to receive an end of a curtain rod."

Appeal No. 2001-0154  
Application No. 08/838,266

We turn next to the examiner's rejection of claims 7 and 8 under 35 U.S.C. 103 as being unpatentable over Corcoran in view of Bellinger. The examiner, recognizing that Corcoran does not disclose the use of additional rod receiving members, relies on Bellinger for disclosing a bracket system comprising a plurality of rod receiving members. The examiner concludes that to incorporate this teaching into the bracket system of Corcoran for the purpose of supporting a plurality of curtains so as to obtain an aesthetically pleasing appearance would have been obvious to one of ordinary skill in the art.

Obviousness is tested by "what the combined teachings of the references would have suggested to those of ordinary skill in the art." In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981). But it "cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination." ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984).

We agree with the appellant that the combined teachings of the prior art do not suggest the provision of a bracket

system with a chamber to receive a mini-blind and a curtain rod adaptor sized and shaped to receive an end of a curtain rod. Instead, it appears to us that the examiner relied

on hindsight in reaching his obviousness determination.

However, our reviewing court has said, "To imbue one of ordinary skill in the art with knowledge of the invention in suit, when no prior art reference or references of record convey or suggest that knowledge, is to fall victim to the insidious effect of a hindsight syndrome wherein that which only the inventor taught is used against its teacher." W. L. Gore & Assoc. v. Garlock, Inc., 721 F.2d 1540, 1553, 220 USPQ 303, 312-13 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984). It is essential that "the decision maker forget what he or she has been taught at trial about the claimed invention and cast the mind back to the time the invention was made . . . to occupy the mind of one skilled in the art who is presented only with the references, and who is normally guided by the then-accepted wisdom in the art." As such, we will not sustain the examiner's rejection of claim 7 and claim 8 dependent thereon.

We turn finally to the examiner's rejection of claims 16

Appeal No. 2001-0154  
Application No. 08/838,266

and 17 under 35 U.S.C. 103 as being unpatentable over  
Corcoran. We will not sustain this rejection because Corcoran  
does not disclose or suggest a bracket having a curtain rod  
adaptor sized and shaped to receive an end of a curtain rod as  
is recited in claim 11 from which claims 16 and 17 depend.

The decision of the examiner is reversed.

REVERSED

NEAL. E. ABRAMS )  
Administrative Patent Judge )



Appeal No. 2001-0154  
Application No. 08/838,266

	)	
	)	
	)	BOARD OF PATENT
LAWRENCE J. STAAB	)	
Administrative Patent Judge	)	APPEALS AND
	)	
	)	INTERFERENCES
	)	
MURRIEL E. CRAWFORD	)	)
Administrative Patent Judge	)	

MC/dym

Millen, White, Zelano & Branigan, PC  
Arlington Courthouse Plaza 1  
2200 Clarendon Boulevard  
Suite 1400  
Arlington VA 22201